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DOCKETS

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June 24, 2002

National Highway Traffic Safety Administration  
Docket Management Facility  
400 Seventh Street, S.W.  
Nassif Building, Room PL-401  
Washington, D.C. 20590

Re: Utilimaster Comments Submitted in Docket No. NHTSA-02-12150; <sup>3</sup>  
Confidential Business Information Notice of Proposed Rulemaking

Dear Sir or Madam:

Utilimaster Corporation (Utilimaster) is submitting this comment on the National Highway Traffic Safety Administration's (NHTSA) confidential business information notice of proposed rulemaking (NPRM), which was published in the April 30, 2002 *Federal Register*.

Utilimaster, with its headquarters and production facilities in Wakarusa, Indiana, is a final stage manufacturer producing walk-in vans for parcel delivery and baking products industry applications, and freight bodies for general commercial use.

#### **The TREAD Act's Disclosure Provision**

Utilimaster cannot understand how the National Highway Traffic Safety Administration (NHTSA), in effect, proposes to ignore the limiting language of the disclosure provision contained within the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. The disclosure clause plainly states that

"None of the information collected pursuant to the final [early warning reports] rule ... shall be disclosed pursuant to section 30167(b) unless the Secretary determines the

disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.”

Utilimaster’s reading of the referenced sections of the National Traffic and Motor Vehicle Safety Act indicates that these relate to FMVSS noncompliance and defect investigations and recall matters, and that, indeed the primarily referenced Section 30167(b) specifically limits disclosure of information under that provision to matters “related to a defect or noncompliance that the Secretary decides will assist in carrying out Sections 30117(b) and 30118-30121” of the federal Safety Act.

Inexplicably, NHTSA transmutes the TREAD Act’s very limited disclosure requirements (relating only to circumstances where the agency determines that such disclosure will assist or implement FMVSS noncompliance and safety defect determinations or recalls) to an open-ended release of early warning reports data in the agency’s public records under the confidential business information NPRM.

Contrary to NHTSA’s statements in the introductory portion of the NPRM, there is nothing in the TREAD Act’s disclosure provision which would require a vehicle manufacturer submitting early warning data to first obtain a determination of confidential treatment from NHTSA in order to invoke the TREAD Act disclosure protections. Utilimaster believes that all substantive early warning information relating to consumer complaints, property damage claims, warranty claims, field reports and reports on incidents involving deaths or injuries have been identified by Congress as a protectable class of submitted materials under the TREAD Act.

The agency’s attempt to short circuit TREAD by serving as a conduit for public dissemination of unsupported, unchecked “claims” data is contrary to a law which, through the express, limiting language of its disclosure provision, implicitly recognizes that the wholesale availability of such early warning report information would seriously damage the competitive

vitality of affected manufacturers. Risk of competitive harm to Utilimaster is especially of concern with respect to production information, warranty claim data and field reports (see below with respect to the latter). These types of information in the hands of Utilimaster's competition could and undoubtedly would be used in their marketing and promotional efforts to attempt to gain a competitive advantage over Utilimaster.

Accordingly, the confidential business information rule must not be amended to require "front-end" confidentiality request submissions by manufacturers to protect early warning report data and, for the same reason, the Class Determinations in Appendix B with respect to consumer complaints, property damage and warranty claims related to early warning report submissions should be deleted.

### **Field Reports**

In the introductory portion of the NPRM, NHTSA "seeks comments regarding whether the agency should presumptively determine that [among other things, copies of field reports] ... would or would not cause competitive harm to the submitted if released." *Federal Register* notice at p. 21200. As Utilimaster indicated in its comment on the early warning reporting NPRM, the Company strongly objects, on behalf of its fleet customer base, even to the submission of "field reports," under which the agency's proposed definition would include written (including electronic) communications from an entity that operates a fleet...." Early Warning NPRM §579.4(a). In the confidential business information NPRM, NHTSA would take this objectionable requirement even further, in considering whether such field reports should be presumptively made available in the agency's public records.

Government and private fleet operations, including the United States Postal Service, United Parcel Service and Federal Express, will strongly object to placement of their written

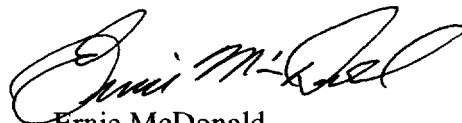
field reports--many of which are in the form of e-mail communications--in NHTSA's public files. Their concerns have a highly sensitive competitive overtone. By way of example, public and private parcel delivery operations do not under any circumstances want their competitors (or competitors of their respective customers) to be aware of and exploit delivery vehicle fleet performance, maintenance or durability issues which might impact on the operational capability of the delivery company in a particular region/trading area, or on the operations of particular customer accounts.

Here again, Utilimaster believes that field report data, if submitted to the agency as part of a vehicle manufacturer's early warning report obligation, are protected from disclosure under the TREAD Act, subject only to the required agency determination involving safety defect or FMVSS noncompliance matters.

### **Conclusion**

Utilimaster is pleased to have this opportunity to submit comments on the agency's confidential business information regulation proposal. The Company invites NHTSA to contact it, should the agency need any further information concerning the matters discussed here..

Sincerely,

A handwritten signature in black ink, appearing to read "Ernie McDonald", written in a cursive style.

Ernie McDonald  
Director, Advanced Engineering